

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 4588 OF 1996

WITH

SPECIAL CIVIL APPLICATION NO. 5451 OF 1996

For Approval of Signature :

Hon'ble MR. JUSTICE R.K. ABICHANDANI Sd/-

1. Whether Reporters of Local Papers may be allowed
to see the judgments ? Yes

2. To be referred to the Report or not ? Yes

3. Whether Their Lordships wish to see the fair copy
of the judgment ? No

4. Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950 or any Order made
thereunder ? No

5. Whether it is to be circulated to the Civil
Judge ? No

Appearance :

Spl.C.A. No. 4588/96

Mr Sudhanshu Patel for Mr K.M. Sheth, Advocate for the
petitioner.

Mr S.N. Shelat, Senior Standing Counsel with Mr D.S.
Nanavati, Advocate for Respondent Nos. 1 and 2.

Miss B.R. Gajjar, Asstt. G.P. for Respondent No. 3.

Mr V.D. Parghi, Advocate for Respondent Nos. 4 to 8

Spl.C.A. No. 5451/96

Mr Sudhanshu Patel, Advocate for the petitioners.

Mr S.N. Shelat, Senior Standing Counsel with Mr D.S.
Nanavati, Advocate for Respondent Nos. 1 & 2

Miss B.R. Gajjar, Asstt. G.P. for Respondent No. 3.

Coram : R.K. Abichandani, J.

Date of Decision : 27/08/1996

Oral Judgment :

Both these petitions raise common questions and

have been heard together for final disposal pursuant to the orders of the Division Bench made on 20th August, 1996 in Letters Patent Appeal No. 891 of 1996 by which the Appellate Bench has transferred these two writ petitions to this Court for final disposal, if possible before 31st August, 1996 on the ground that it may not be possible for the learned Single Judge to whom the matters would have gone, to hear the same as heavy admission work was also listed on His Lordship's board. Accordingly, the matters have been heard and are being finally disposed of by this common judgment. Earlier Rule was issued on 7.8.1996 in Special Civil Application No. 5451 of 1996 and made returnable on 13.8.1996 while notice was issued in Special Civil Application No. 4588 of 1996 and made returnable on 8.7.1996 followed by a direction on 8.7.1996 that the petition will be listed for final hearing on 15.7.1996. Rule in Special Civil Application No. 4588 of 1996. All the parties in both the petitions are represented through their advocates who have argued the petitions for final hearing.

2. The dispute in these petitions revolves around the amendment made in Rule 1.1 of the Rules governing the admission to Post Graduate Degree and Diploma Medical Courses effective from 1.1.1996.

3. Special Civil Application No. 4588 of 1996 has been filed by a candidate who joined First MBBS in August, 1990 and passed the Third MBBS in March, 1995 all throughout in first attempts and did his internship from 1.6.1995 upto 31.5.1996 making him eligible for the Post Graduate Degree course.

4. Special Civil Application No. 5451 of 1996 has been preferred by two candidates of whom the petitioner No. 1 passing all throughout in his first attempts after joining MBBS in August, 1990 cleared his Third MBBS in December, 1994. The petitioner No. 2 passed First and Second MBBS at the first attempts, but the Third MBBS at the second attempt in May, 1995 having joined MBBS course in August, 1990.

5. It has been contended on behalf of the petitioners by their learned Counsel that by virtue of the amendment to Rule 1.1 of the Eligibility Rules, the petitioners are being put to a disadvantageous position inasmuch as they are now required to compete with the candidates who had joined MBBS course prior to 1.1.1989 and cleared their examinations after several attempts. It was submitted that those who were ineligible to join

the course by virtue of clauses (a) and (b) of Rule 1.1 are by this amendment now made eligible and their names are included in the list of competing candidates. It was contended that this is how the authorities were construing the amendment and if it is so construed, it is arbitrary and violative of Article 14 of the Constitution. It was submitted that on a proper construction of the amendment, there was no such benefit intended for those candidates who were not eligible prior to the coming into force of the amended Rule.

6. In Special Civil Application No. 5451 of 1996 an additional argument is made to the effect that the reserved seats which remain vacant due to non-availability of all the reserved category candidates should be released in favour of general category candidates.

7. Mr S.N. Shelat, the learned Senior Counsel appearing for the University and the College submitted that the University was empowered to frame such rules governing admission to Post Graduate Courses and the challenge against Rule 1.1 as it originally stood in form of Rule 11 was earlier considered and negatived by this Court in the case of Prashant Vs. Gujarat University, reported in 1990 (2) GLR 1066. It was submitted that the University was empowered to make amendment in the said Rule and indicate a cut off date. He submitted that there was no ground made out for invalidating the amendment in the Rule and the Rule should be applied as may properly be construed. He submitted that the admissions have not been finalised in case of such repeaters, but only the first list was published in which the names of candidates who were passed at first attempt figured. The second list will depend on the construction of Rule 1.1 as amended, as may be given by this Court. He submitted that as regards Rule 5.5 the contingency is not yet arisen because it is not clear as to whether vacancies in the reserved categories will be available for general category and as and when the contingency arises, the Rules including Rule 5.5 will be duly followed.

8. Mr N.D. Nanavati, learned Senior Counsel appearing in Special Civil Application No. 4588 of 1996 for respondent No. 4 submitted that the petitioner of that petition had no locus standi to maintain the petition having passed his Third MBBS Examination from Pramukhswamy Medical College, Karamsad. According to him the petitioner cannot be treated as a person aggrieved by

the amendment in the Rule. As regards Special Civil Application No. 5451 of 1996, he contended that the petition must fail for want of necessary parties. However, in that petition, one Civil Application No. 5780 of 1996 was made by five candidates and that has already been allowed and they are impleaded as party respondents Nos. 4 to 8. Learned advocate Mr Parghi appears on their behalf and states that he adopts all the contentions of Mr N.D. Nanavati.

9. Mr Nanavati argued that Rules of this nature framed by the University have no statutory force. He submitted that as a one time measure the University has done this exercise of amending Rule 1.1 for the purpose of mopping up talent from amongst those who were otherwise not eligible. He submitted that merely because they had failed more number of times and were rendered ineligible under the earlier Rules, it cannot be said that they should not be allowed to compete on the basis of their performance at the last examination. He submitted that ultimately this was a matter of policy and this Court should on the ratio of Prashant case (Supra) more particularly para 20 of that judgment, not interfere with the policy reflected in the amended rule. He submitted that the Rule was not challenged on the ground of lack of powers or malafides and there was no case made out for interference with it under Article 226 of the Constitution.

10. In the case of Prashant (Supra), while considering Rule 11 of the Rules which came into force from 1.1.1989, it was held that the Courts should not lightly disturb a policy decision taken by an Expert Committee of a University and that when a Rule was made in order to maintain high standard in the course of Post Graduate Medical studies by the University to the effect that those who have passed First MBBS at the first or second trial and Second MBBS at the first or second trial and Third MBBS at the first, second or third trial only shall be eligible for admission to Post Graduate Medical Course, it cannot be said that the eligibility criterion adopted by it is irrational. It was also held that though the Rules were published in 1990 they could be made effective from 1.1.1989.

11. The relevant Rule which is required to be construed reads as under :

"1. ELIGIBILITY :

Only those candidates who fulfill the following conditions shall be eligible for admission to P.G. Medical Courses : However 1.1 below will not be applicable to candidates admitted under Rule 2.

1.1 (a) For candidates belonging to reserved category under Rule : Those who have passed First M.B.B.S. Examination at 1st, 2nd or 3rd trial, Second M.B.B.S. Examination at 1st, 2nd or 3rd trial and Third M.B.B.S. Examination at 1st, 2nd, 3rd or 4th trial.

(b) For rest of the candidates : Those who have passed First M.B.B.S. Examination at 1st or 2nd trial, Second M.B.B.S. at 1st or 2nd trial and Third M.B.B.S. Examination at 1st, 2nd or 3rd trial.

Note : First trial is deemed to take place when he is due to appear for the examination, irrespective of his actual appearance, provided that non-appearance is not a result of reasons beyond his control. Similarly 2nd, 3rd, etc. trials relating to subsequent examinations.

Above (a) and (b) will be applicable to the students admitted after 1.1.1989 in M.B.B.S. course."

(Emphasis supplied)

The Rule as it was in force prior to 1.1.1996 did not contain the words "Above (a) and (b) will be applicable to the students admitted after 1.1.1989 to M.B.B.S. course". In the affidavit in reply which has been filed by the University it has been stated that under the unamended Rule 1.1 (a) & (b) which was applicable from 1.1.1990, candidates who had not passed the examination within the specified trials were not to be considered eligible for admission. It is contended that representations were received from some ineligible candidates that these rules should not be made applicable to them, because they had joined MBBS course prior to 1.1.1989 when they were not aware about any such disability. It is then stated that since those students who had joined prior to 1.1.1989 could not have been aware about the standard of eligibility which came into force from 1.1.1989, the University did not insist upon maintaining the eligibility standards in respect of these

students. Precisely, this contention was negatived by the Division Bench in the case of Prashant (Supra) and the University is taking an opposite stand in this petition, to the one which was taken in Prashant case (Supra). In that matter, it was stated by the University in reply affidavit that it intended to apply the new Rules which were effective from 1.1.1989 to all the students who sought admissions to Post Graduate Medical studies in January and July, 1989. The Court in terms negatived the arguments based on the contention that promissory estoppel can be invoked since the embargo was not there prior to 1.1.1989 and held that when those students were admitted to First MBBS course, no promise can be said to have been made by the University to them that the same rules which were then governing the admissions to Post Graduate Medical Courses would continue to apply to them when their turn comes.

12. The amended portion of Rule 1.1 specifies that Clauses (a) and (b) of Rule 1.1 will be applicable to the students admitted after 1.1.1989 in the MBBS course. Clauses (a) and (b) lay down the eligibility criteria for admission to Post Graduate Medical courses and only those candidates who fulfil the criteria under these two clauses would be eligible. In other words, if the candidate does not fall in any of these two clauses, he is not eligible for admission to the Post Graduate medical course. The eligibility criteria in clause (a), for reserved category, is that the candidates should have passed First MBBS examination at first, second or third trial, Second MBBS examination at first, second or third trial and Third MBBS examination at first, second, third or fourth trial. For rest of the candidates, the eligibility criteria prescribed for admission to the Post Graduate course in clause (b) is that the candidates should have passed the First MBBS examination at the first or second trial and Second MBBS examination also at the first or second trial, while the Third MBBS examination at the first, second or third trial. Therefore, the candidates should have passed their examinations within the stipulated trials in order to become eligible for admission to the Post Graduate course. By the amendment, this eligibility criteria in clauses (a) & (b) is made applicable to the students admitted after 1.1.1989 in MBBS course. It is, therefore, obvious that the eligibility of the candidates under clauses (a) and (b) is confined only to the students who were admitted in the MBBS course after 1.1.1989 and the students who were admitted prior to that date do not fall in the category of eligible candidates. Therefore, even reading the rule as amended, it can never

be said that those who were ineligible, by virtue of passing the examinations in more number of trials than the specified trials, are now made eligible by the said amendment. There is nothing in the amended portion which would lead to an inference that those who were ineligible have now been made eligible. On the contrary, the amendment now confines the eligibility criteria to only those students who were admitted to MBBS course after 1.1.1989. Therefore, the stand taken up by the University in the affidavit-in-reply filed by the Deputy Registrar which even the learned senior Counsel appearing for the University was unable to agree with, cannot be sustained. There is nothing in the amended rule which can be construed so as to extend an invitation to all those who were hitherto ineligible to apply for the course. If this stand taken in the affidavit-in-reply of the University is accepted, an absurd situation would result and a candidate who might have failed in many more number of trials in the past i.e. prior to 1.1.1989 in all the three examinations and was not eligible under the pre-amended rule would become eligible, while, a candidate who is admitted after 1.1.1989 would be ineligible, if he has not passed in any of the examinations in the specified trials. The plain grammatical meaning of the amended portion is that it makes only the candidates who had joined the MBBS Course after 1.1.1989 and have passed the examinations in the specified trials as per clauses (a) and (b), as the eligible candidates for admission to the Post Graduate Courses. That would be a just and proper construction of the provision and no other interpretation is possible having regard to the language of the rule and the purpose underlying it and in keeping with the high standard of Post Graduate Medical Courses the amended rule so construed cannot be said to be arbitrary and therefore, is required to be upheld. The challenge against the validity of the amendment of Rule 1.1 is therefore negatived.

13. The University has taken up a stand that by this amendment relaxation is made in favour of the candidates who were ineligible prior to this amendment in Rule 1.1. There is no scope for such a stand on a proper construction of the amended Rule 1.1 and if the University has done so, it is grossly erroneous, arbitrary and contrary to the purpose underlying the amended eligibility Rule 1.1. The contentions canvassed on behalf of the Respondents cannot therefore be accepted.

14. It is stated that the admissions have not been

finalised as regards such candidates. It is, therefore, directed that the University will finalise the admissions forthwith in light of the amended Rule 1.1 as construed hereinabove. It is only after this exercise is done that the question regarding excess vacant seats available from the reserved categories under Rule 5.5 can arise and therefore, no direction is required to be given in that regard. Rule is made absolute accordingly in both the petitions with no order as to costs.
